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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-139

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section PSC 160.01 (4) specifies that the manner of enforcing ch. PSC 160 is prescribed in s. 196.66, Stats. Section 196.66, Stats., contains general forfeiture provisions applicable to public utilities and their officers, agents and employees. Portions of ch. PSC 160, such as s. PSC 160.18, apply to telecommunications providers that are not telecommunications utilities, including cellular mobile radio telecommunications utilities and telecommunications carriers. Given the general exemptions from regulation under ch. 196 for cellular mobile radio telecommunications utilities in s. 196.202 (2), Stats., and for telecommunications carriers in s. 196.499 (1), Stats., it is not apparent that the commission has the authority to apply s. 196.66, Stats., to these providers.

b. Depending upon how low-income assistance eligibility is determined under s. PSC 160.06 (1), the requirement that a person receiving assistance disclose his or her Social Security number as a condition of receiving the assistance may not be allowed under the limitations that the Federal Social Security Act place on the ability of states to require persons to disclose their Social Security numbers [42 U.S.C. s. 405 (2) (C)]. If the commission has not already done so, it should review applicable federal law to ensure that the rule will be consistent with that law.

c. Section 196.218 (3) (b), Stats., provides that the commission may exempt from part or all of the contributions to the universal service fund telecommunications providers who have small gross operating revenues from the provision of intrastate telecommunications services in Wisconsin and who have provided these services for less than a period specified by the commission, not to exceed five years. Section PSC 160.18 (1) (a) exempts from the universal service

fund assessment any Wisconsin telecommunications provider with intrastate gross telecommunications revenues of less than \$500,000 during the preceding calendar year. The commission should explain why the second portion of the statutory requirement, relating to a period during which these services have been provided, has not been included in the rule.

2. Form, Style and Placement in Administrative Code

a. The department should review the rule and, as appropriate, correct the following deficiencies in drafting style and form:

- (1) The preferred drafting style to express a mandatory duty is to use “shall” as part of the verb. To express a discretionary authority, the preferred drafting style is to use “may” as part of the verb. [See s. 1.01 (2), Manual.] Throughout the rule, “must,” “can” and “will” are used contrary to this preferred drafting style. See, for example, ss. PSC 160.04 (1), 160.06 (3) and 160.11 (5) (intro.).
- (2) In ss. PSC 160.02 (3) and 160.11 (1), the use of slashed alternatives is not preferred drafting style. [See s. 1.01 (9), Manual.]
- (3) The use of parentheses to contain parenthetical or explanatory material is not preferred drafting style. [See s. 1.01 (6), Manual.] This style was not followed throughout the rule, including ss. PSC 160.03 (2) (a) 3., 160.062 (2) (a) and 160.09 (3) (f).
- (4) In s. PSC 160.035 (2) (a), the use of abbreviations and acronyms is not preferred drafting style. [See s. 1.01 (8), Manual.]
- (5) In s. PSC 160.16 (6), the preferred adjective before “costs” is “administrator’s” rather than “its.” [See s. 1.01 (3), Manual.]

b. Section PSC 160.03 (2) (intro.) should be rewritten to read: “‘Essential telecommunications services’ means all of the following:”. [See also s. PSC 160.035 (2) (intro.).]

c. In s. PSC 160.062 (2) (b), the phrase “adoption of these rules” should be replaced by the phrase “effective date of this chapter [revisor inserts date].” [See also s. PSC 160.09 (8), in which the phrase “currently in effect” should be replaced by the phrase “in place on the effective date of this chapter [revisor inserts date].”

d. In s. PSC 160.061 (5), because the introductory material does not grammatically lead into the following subunits, the introduction should be renumbered par. (a) and the remaining paragraphs should be renumbered accordingly. [See also ss. PSC 160.071 (1), 160.09 (2) and 160.14 (2) and (5).]

e. In s. PSC 160.09 (6), the notation “PSC” should be inserted before the reference to “160.062.”

f. In s. PSC 160.09 (9), the last sentence should be rewritten to read: “This subsection does not apply to rural line extension contracts entered into before January 1, 1996.”

g. In s. PSC 160.018 (2), the phrase “under these rules” should be replaced by the phrase “under this chapter.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. The reference to “such other means as provided in statutory sections administered by the commission” in s. PSC 160.01 (4) is vague. Can the commission specify which statutory sections are referenced in this provision?

b. To make the references to the programs identified in s. PSC 160.02 (7) (a) to (f) unambiguous, each reference should include not only the title of the program but also a cite to the relevant state or federal statute authorizing the program. For example, s. PSC 160.02 (7) (d) should read “the food stamp program under 7 USC 2011 to 2029.”

c. In s. PSC 160.03 (2) (a) 6., can the use of the word “rules” be replaced by an appropriate numerical cross-reference?

d. The references to the programs eligible for funding by the universal service fund listed in s. PSC 160.05 (1) to (10) would be clarified if they included cross-references to the appropriate provisions in ch. PSC 160. For example, s. PSC 160.05 (2) should read “Lifeline assistance specified in s. PSC 160.062.”

e. Section PSC 160.18 (4) appears to require the completion of a form approved by the commission. If a new form is to be used, the requirements of s. 227.14 (3), Stats., should be met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section PSC 160.01 (2) generally states that the commission may provide exceptions to the requirements of ch. PSC 160. However, no standards are included in the rule that will guide applicants seeking exemptions or that will guide the commission in granting exemptions. Further, it should be noted that any exemption granted by the commission evidencing an agency policy should be promulgated as an administrative rule. [See also ss. PSC 160.01 (5), 160.071 (1) (f) and 160.09 (9).]

b. The commission should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule:

(1) “Self-healing,” as used in s. PSC 160.035 (2) (c).

(2) “Local loop” in ss. PSC 160.09 (2) (intro.) and (a) and (3) (a) to (d) and 160.12 (title).

Also, the commission should review whether any statutory definitions contained in s. 196.01, Stats., should be incorporated in the rule. This can be done by inserting a new introduction to s. PSC 160.02 that states: “The definitions in s. 196.01, Stats., apply in this chapter. In addition, in this chapter:”.

c. In s. PSC 160.02 (2), the second sentence should begin: “‘Disability’ includes a speech, vision or hearing impairment....”

d. In s. PSC 160.071 (1) (d), the phrase “listed above” should be replaced by the phrase “described in par. (a).” Also, in par. (g), the phrase “is not to” should be replaced by the phrase “may not.”

e. Section PSC 160.09 refers to “high rate assistance credits” and “rate assistance credits.” One term should be used. Also, in sub. (3) (b), (c) and (d), the phrase “equal to or” should be inserted before the word “above.”

f. In s. PSC 160.19 (2), the semicolon preceding the phrase “including residential, business, governmental, institutional and public special interest group users of telecommunications services” should be deleted.

g. The rule contains a number of provisions that are not clear. The commission should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

- (1) The use of the phrase “a whole range of motion impairments” in s. PSC 160.02 (2) is potentially confusing. Can “a whole range of” be deleted and still convey the meaning of the sentence?
- (2) The rule uses the following terms: “local exchange service provider,” “local telecommunications utility,” “local exchange companies,” “local exchange telecommunications utilities” and “local exchange providers.” See, for example, ss. PSC 160.035 (1), 160.06 (3), 160.04 (1), 160.062 (1) and 160.09 (8). If these terms refer to different types of providers, then the commission should define the terms. If they refer to the same type of provider, then the commission should use consistent terminology.
- (3) The application of s. PSC 160.06 (1) is not clear, in part, due to this subsection being written in the passive voice. Can the commission rewrite it in the active voice and thus clarify who will be verifying eligibility for low-income assistance programs? Also, under the definition of “low-income” in s. PSC 160.02 (7) (intro.), a person must be eligible for benefits from one or more of the specified programs but does not have to be actually receiving those benefits to be considered “low-income.” Under s. PSC 160.06 (1), the person must be an active client of the Department of Health and Social Services or recipient of homestead tax credit to be eligible for low-income assistance programs. The commission should reconcile these two provisions.
- (4) To whom will local exchange companies inquire regarding eligibility of the customer for low-income programs under s. PSC 160.06 (3)?
- (5) Section PSC 160.063 (1) refers to “authorized homeless shelter authority.” Who authorizes these authorities?

- (6) In s. PSC 160.07 (2), does “company” refer only to a telecommunications provider? If so, the more specific term should be used.
- (7) In s. PSC 160.071 (1) (intro.), who makes the vouchers available to assist disabled customers? Similarly, in s. PSC 160.07 (1) (c), to whom do customers with disabilities apply for these vouchers?
- (8) The use of “overheads” in s. PSC 160.071 (2) is informal and potentially ambiguous. Does “overhead costs” convey the meaning of the provision?
- (9) Is a conjunction missing between “hearing” and “speech” in s. PSC 160.071 (3)?
- (10) In s. PSC 160.075 (2), the phrase “but are not limited to” is redundant.
- (11) In s. PSC 160.092 (1), the term “described” is redundant. Also, in sub. (2), for how long may an experiment be extended by the commission?
- (12) The phrase “out of intracompany sources” in s. PSC 160.10 (3) is not plain language. Would “by the telecommunications utility” suffice? Also, in sub. (4), should the phrase “when not funded by the telecommunications utility” be inserted at the end of the last sentence in order to comport with the provisions of sub. (3)?
- (13) Section PSC 160.11 (3) (intro.) refers to rate discounts, whereas s. PSC 160.11 (5) (a) to (d) refer to credits. If rate discounts differ from credits, then the commission should clarify the differences. If they are the same, then consistent terminology should be used in these provisions.
- (14) In ss. PSC 160.13 and 160.14, what are the responsibilities of the providers of last resort?
- (15) In s. PSC 160.14 (6), will a provider always be selected by auction? What is the result if a provider is not selected by an auction?

7. Compliance With Permit Action Deadline Requirements

The rule applies for various waivers and exemptions from requirements. For example, s. PSC 160.04 (5) provides that the commission staff will review a waiver request regarding blocking obligations and issue a letter to a utility granting or denying the application. The commission should review the provisions of s. 227.116, Stats., for their applicability to this rule.